IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 2ND JULY 2007 / 11TH ASHADHA 1929

Bail Appl..No. 3978 of 2007()

CRMP.832/2007 of DISTRICT COURT, KASARAGOD
CRIME NO.77/2007 OF AMBALATHARA POLICE STATION

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PETITIONRS/ACCUSED:

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1. ABDUL NASIR, AGED 34 YEARS,
   S/O.ABDUL KHADER,BADARIYA HOUSE,
   BEACH ROAD, KASARAGOD.

2. BASHEER, AGED 31 YEARS,
   S/O.ABDUL KHADER,BADARIYA HOUSE,
   BEACH ROAD, KASARAGOD.

3. ABDUL SALAM, AGED 29 YEARS,
   S/O.ABOOBACKER, DAYA MANZIL,
   BEACH ROAD, KASARAGOD.

4. K.S.NOUSHAD, AGED 30 YEARS,
   S/O.ABDUL SALAM, RESIDING AT BEACH ROAD,
   NELLIKKUNNU KADAPPURAM, KASARAGOD.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENTS:

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1. STATION HOUSE OFFICER,
   AMBALATHARA POLICE STATION,
   KASARGOD.

2. STATE OF KERALA,
   REPRESENTED BY PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 02/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.3978 of 2007

Dated this the 2nd day of July 2007

O R D E R

Application for anticipatory bail. The petitioners, four in number, apprehend arrest as accused in a crime registered inter alia under Sections 452 and 324 I.P.C.

2. The learned Public Prosecutor on instructions, submits that petitioners 3 and 4 are not accused persons in the crime at all. They are not required to be arrested. That submission of the learned Public Prosecutor is taken note of and recorded. Their apprehension is found to be without any basis. In these circumstances, it is not necessary to issue any directions in favour of petitioners 3 and 4.

3. As regards petitioners 1 and 2, the learned counsel for the petitioner submits that, as a matter of fact, petitioners 1 and 2 and the defacto complainant were working abroad. There were some monetary transactions. Some amounts have been paid by the defacto complainant to accused 1 and 2. That was demanded. There was an agreement to repay the amount; but

the amount was not paid. Petitioners 1 and 2 went to the house of the defacto complainant to claim that amount. He disowned the liability. There was a wordy altercation. Neighbours came to know of this. Because of such insult suffered by the defacto complainant, false allegations have been raised. Directions under Section 438 Cr.P.C may be issued in favour of the petitioners, it is prayed.

4. The learned Public Prosecutor opposes the application. There are no circumstances justifying the invocation of the jurisdiction under Section 438 Cr.P.C, submits the learned Public Prosecutor.

5. I find merit in the opposition by the learned Public Prosecutor. This, I am satisfied, is a fit case where the petitioners must resort to the normal and ordinary course of appearing before the investigator or the learned Magistrate having jurisdiction. They must, then, seek bail in the regular and ordinary course.

6. I do not find any circumstances which would justify invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This is a fit case where the petitioners must

appear before the learned Magistrate or the investigating officer and seek bail in the regular and ordinary course.

7. In the result, this petition is dismissed. Needless to say, if the petitioners 1 and 2 surrender before the investigating officer or the learned Magistrate and apply for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007